

Remarks

1. An Office Action requiring Applicants to elect a single disclosed species for prosecution on the merits was mailed July 29, 2004. In response to the Election/Restriction Requirement, Applicants submit this Second Preliminary Amendment and Response to Election/Restriction Requirement.

Claim Amendments

2. Claims 53-96 were originally presented for examination in this application. By the foregoing Amendments, claims 97-112 have been added. No claims have been canceled or amended. Thus, upon entry of this paper, claims 53-112 will be pending in this application. These amendments are believed not to introduce new matter and their entry is respectfully requested.

Restriction Requirement

3. The Examiner has required the election of a single disclosed species for prosecution on the merits. The Examiner has identified the following thirteen (13) patentably distinct species:

Species I: Figure 1-5.

Species II: Figure 6a.

Species III: Figure 6b.

Species IV: Figure 6c.

Species V: Figure 6d.

Species VI: Figure 6e.

Species VII: Figure 6d.

Species VIII: Figure 7.

Species IX: Figure 8a.

Species X: Figure 8b.

Species XI: Figure 8c.

Species XII: Figure 8d.

Species XIII: Figure 9a-9d.

Traversal of Requirement

4. Applicants respectfully traverse the requirement to restrict the claims pending in the present application prior to entry of this paper. “There are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 -§ 806.05(i)); and (B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) -§ 806.04(i), § 808.01(a), and § 808.02).” (See, MPEP § 803.) Applicants respectfully assert that, for at least the reasons set out below, the above restriction fails to satisfy the above criteria, and should be withdrawn.

The Examiner Has Failed To Contend That The Claims Are Directed To Independent Or Distinct Inventions

5. As explained in the MPEP: “Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct; ...” (See, MPEP § 808; emphasis in original.) “The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.” (See, MPEP § 816.)

6. Applicants assert that no such reasoning has been provided to support the outstanding Restriction Requirement. In fact, in the current Office Action, the Examiner has provided only a “mere statement of conclusion” by identifying the species with reference to the Figures. No additional information is provided beyond standard paragraph 8.01. The MPEP provides examples of the type of reasoning that should be included to support a restriction requirement. (See, for example, MPEP § 816.) Because the outstanding Restriction lacks any such support, Applicants assert the Restriction is improper and should be withdrawn.

7. In addition, Applicants respectfully assert that the Examiner has failed to address the *claimed invention* as required. (See, MPEP § 808.) Specifically, the Examiner should “[c]learly identify each ... of the disclosed species, *to which claims are directed*” (See, MPEP § 809.02(a); emphasis in original.) This failure has resulted in the Examiner identifying “species” for which no claims are pending in the present application. For

example, no claims which were pending in this application prior to entry of this paper are readable on at least species IX through XIII. Applicants respectfully request that for this reason alone, the restriction is improper and should be withdrawn.

***The Examiner Has Failed To Provide Any Reason
For Insisting Upon The Restriction of The Claimed Invention***

8. As noted above, there must be “a serious burden on the examiner if restriction is required.” (See, MPEP § 803.) This is a separate and distinct requirement that must be shown by the Examiner: “If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” (See, MPEP § 803.) In the above Restriction Requirement the Examiner has failed to provide any such showing. Further, Applicants respectfully assert that a search performed for any claim pending in the application prior to entry of this paper would uncover references potentially relevant to other claims then pending in this application. Accordingly, Applicants assert that this burden cannot be met and, for this reason alone, the requirement should be withdrawn.

9. For any one of the above reasons, Applicants respectfully assert that the Examiner has failed to provide a *prima facie* showing that the claims pending in this application prior to entry of this paper are properly subject to restriction. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the outstanding Restriction Requirement.

Provisional Election

10. In the foregoing Amendments, Applicants have added new claims 97-112. In accordance with 37 CFR § 1.143 and MPEP 818.02(a), Applicants hereby provisionally elect generic independent claim 97 and claims 98-112, which depend therefrom.

10. In the foregoing Amendments, Applicants have added new claims 97-112. In accordance with 37 CFR § 1.143 and MPEP 818.02(a), Applicants hereby provisionally elect generic claim 97 and the species covered by dependent claims 98-101 and 108-111.

11. Applicants do not intend to dedicate non-elected claims to the public and reserve the right to file divisional applications for the subject matter covered by the non-elected claims.

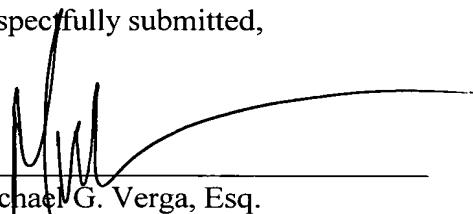
12. The inventorship for the invention of the elected claims is the same as the inventorship of

record in this application.

Conclusion

13. In view of the foregoing, it is respectfully submitted that this application is in condition for allowance and favorable action is respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael G. Verga', is written over a horizontal line.

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